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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,726	01/02/2002	Neil Porter	08364.0025	8955
22852	7590	06/09/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			WINSTON, RANDALL O	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/936,726

**Applicant(s)**

PORTER ET AL.

**Examiner**

Randall Winston

**Art Unit**

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Restriction to one of the following inventions is required under 35 U.S.C. 121 and 372:

This application contains the following inventions or groups of invention which are not so linked as to form a single inventive concept under PCT Rule 13.1:

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I. Claims 1-13, 32, drawn to a method of producing a biochemical comprising providing a microorganism on a support, positioning the support and separating said microorganism.

Group II. Claims 14-16, 33, drawn to a method of developing a pharmaceutical product comprising performing claim 1, applying mass spectrometry, identifying a biochemical component and testing identified biochemical for pharmaceutical efficacy.

Group III. Claims 17-19, 34, drawn to a method of developing an agrochemical product comprising performing claim 1, applying mass spectrometry, identifying a biochemical component and testing identified biochemical for agrochemical efficacy.

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Group IV. Claims 20 and 25, drawn to a method of producing a pharmaceutical product comprising the steps of claim 1, testing each sample for pharmaceutical efficacy and producing and preparing the biochemical for human or animal consumption.

Group V. Claims 21-24, 35, drawn method of developing an agrochemical product comprising producing a plurality of samples by means of claim 1, testing samples and producing and preparing the biochemical for agricultural application.

Group VI. Claims 26-31, drawn to an apparatus for producing a biochemical.

The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1, because PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature of each unrelated method of Groups I-V is: each Group's method produces different products (i.e. a biochemical product or a pharmaceutical product or an agrochemical product) utilizing different steps to produce the different products and/or each Group's method produces the same product utilizing different steps to produce the same product as exemplified above. Moreover, Group I-V and Group VI do not share a special feature because Group IV and Group VI are unrelated as an apparatus and a product made. For example, Group I's biochemical product as claimed can be made by another and materially different apparatus of Group VI such as the apparatus in Berson et al. (US 4868123).

For the reasons above, the inventions of Group I-VI do not share a special technique feature. Accordingly, the search for each of the above inventions is not co-extensive particularly with regard to the literature. Further, the reference which would anticipate the invention of one group would not necessarily anticipate or even make obvious the other group.


Applicant is advised that the reply to this requirement to be completed must include an election of the invention to be examined even though the requirements be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 571-272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**BRENDA BRUMBACK**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**